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FT TRAVEL – NEW YORK, LLC,

d/b/a FROSCH TRAVEL

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

FT TRAVEL-NEW YORK, LLC, d/b/a
FROSCH TRAVEL,

Plaintiff,

v.

YOUR TRAVEL CENTER, INC.; YTC
TRAVEL, LLC; and COLIN
WEATHERHEAD,

Defendants.

CASE NO. 2:15-CV-1065

COMPLAINT

Plaintiff FT TRAVEL – NEW YORK, LLC, d/b/a FROSCH TRAVEL (“FROSCH” or “Plaintiff”), by its undersigned counsel, alleges upon personal knowledge as to itself, and upon information and belief as to all other matters, the following:

NATURE OF THE ACTION

1. This action stems from Defendant Your Travel Center, Inc.’s breach of a valid, binding, and fully enforceable agreement with FROSCH, which caused FROSCH

1 to suffer significant damages and reputational harm for which it has no adequate remedy
2 at law.

3 2. Accordingly, FROSCH seeks specific performance ordering Your Travel
4 Center, Inc. (“YTC”) to perform its contractual obligations with FROSCH.
5 Alternatively, FROSCH seeks damages from YTC and its principal Colin Weatherhead
6 (“Mr. Weatherhead” or “Defendant Weatherhead”) – who personally guaranteed YTC’s
7 performance under the agreement with FROSCH – for YTC’s breach of contract.

8 **THE PARTIES**

9 3. Plaintiff FROSCH is a Delaware limited liability company that is co-
10 headquartered in New York, New York and Houston, Texas. FROSCH’s sole member
11 is a natural person who resides in Houston, Texas.

12 4. Defendant YTC is a California corporation with its principal place of
13 business located in Santa Barbara, California.

14 5. Upon information and belief, and as explained further below, Defendant
15 YTC Travel, LLC (“LLC”) is a non-existent entity that is named as a Defendant in this
16 lawsuit out of an abundance of caution in case it exists as a separate legal entity.

17 6. Defendant Weatherhead is a natural person who resides in Bend, Oregon,
18 and who also has a residence in Santa Barbara, California. Mr. Weatherhead is YTC’s
19 President and CEO.

20 **JURISDICTION AND VENUE**

21 7. Subject matter jurisdiction is proper in this Court pursuant to 28 U.S.C. §
22 1332(a)(1) because the matter in controversy exceeds the sum of \$75,000, exclusive of
23 interest and costs, and is between citizens of different states. Specifically, FROSCH is a
24 citizen of Texas, and upon information and belief, no Defendant is a citizen of Texas.

25 8. Personal jurisdiction is proper in this Court pursuant to C.C.P. § 410 and
26 the Due Process Clause of the Constitution because Defendants have minimum contacts
27 with California sufficient to show that they have purposely availed themselves to the
28 laws of this forum. As set forth further above and below, each of the Defendants has

1 substantial, continuous, and systematic contact with California subjecting them to
2 personal jurisdiction in this Court.

3 9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because (i) a
4 substantial part of the events giving rise to the claim occurred in this District, and (ii)
5 each of the Defendants is subject to personal jurisdiction in this District. Indeed, YTC's
6 principal place of business is within this District and Mr. Weatherhead has a residence
7 within this District.

8 **FACTUAL BACKGROUND**

9 **FROSCH's History and Extensive Growth**

10 10. FROSCH is a travel management company founded more than 40 years
11 ago that provides high-touch leisure and corporate travel services to individuals and
12 companies by, among other things, selling air transportation. FROSCH has been ranked
13 as one of the top ten travel management companies in the country.

14 11. In 1998, FROSCH's current President and CEO, Bryan Leibman, joined
15 FROSCH with a vision to grow the company and continue delivering industry-leading
16 expertise and travel services to its customers.

17 12. Since Mr. Leibman joined FROSCH, the company has expanded by an
18 average of 30% per year through internal growth and strategic acquisitions. In the last
19 16 years, FROSCH grew from 30 employees to more than 1,400 in offices nationwide.

20 13. As part of its growth plan, FROSCH looks for opportunities to acquire
21 travel agencies and similar companies offering leisure or corporate travel services.

22 **FROSCH'S Relationship and Discussions With YTC to Acquire YTC's Business**

23 14. In or around 2009, Mr. Leibman met Defendant Weatherhead, YTC's
24 President and CEO. Like FROSCH, YTC operates an independent retail travel agency
25 selling air transportation and other travel services to clients. Unlike FROSCH, YTC
26 operates on a much smaller scale. For example, upon information and belief, YTC
27 primarily serves southern California and parts of Arizona, and maintains only
28 approximately seven offices.

1 15. Messrs. Leibman and Weatherhead developed a personal relationship and
2 discussed business opportunities at various times over the last five years. During
3 several discussions, Mr. Weatherhead professed great admiration and respect for
4 FROSCH's business model and Mr. Leibman's leadership, and made clear that he was
5 interested in entering into a business relationship with FROSCH.

6 16. Specifically, Messrs. Leibman and Weatherhead discussed a contractual
7 arrangement whereby YTC would report all of its airline sales through a FROSCH
8 "ARC"¹ branch office until Mr. Weatherhead decided he wanted to exit the travel
9 management business and sell YTC. At that time, FROSCH would acquire YTC at a
10 contractually agreed-upon formula.

11 17. In return for reporting its airline sales through a FROSCH ARC branch
12 office and agreeing to be purchased by FROSCH, YTC was to receive, among other
13 things, access to FROSCH's superior and vast network of service providers and
14 preferred relationships, as well as benefit from FROSCH's operating and technological
15 expertise.

16 18. YTC would also receive significant cash payments and credits in the form
17 of "commissions" and "overrides" from airline companies as a result of reporting its
18 airline sales through FROSCH's ARC. Specifically, airlines generally pay travel
19 agencies both (i) "commissions" (i.e., an upfront payment based on a percentage of the
20 price of the airline tickets sold); and (ii) "overrides" (i.e., backend payments or credits
21 once travel agencies reach certain pre-determined goals of airline ticket sales sold
22 through a particular ARC branch).

23 19. The commissions and overrides that airlines pay travel agencies are
24 generally tied to the volume of sales reported through a particular ARC branch. Smaller
25 travel agencies, like YTC, generally receive de minimis commissions and overrides

26 ¹ "ARC" stands for Airlines Reporting Corporation, an independent entity that serves as the
27 clearing agent for travel agencies' sales of airline tickets. Travel agencies, such as FROSCH, have
28 ARC appointments through which they report their ticket sales and receive commissions and other
payments from airlines.

1 because their sales are on a small scale. Conversely, larger companies like FROSCH
2 receive significantly more commissions and overrides based on their increased volume
3 that they report through their ARCs.

4 20. By reporting its airline sales through FROSCH's ARC, YTC would receive
5 the benefit of FROSCH's increased volume and receive dramatically more commissions
6 and overrides from airlines.

7 21. During each of the parties' numerous discussions over the past five years
8 concerning their business relationship, Mr. Weatherhead was always clear that he
9 intended to transfer YTC's business to FROSCH, and that FROSCH would ultimately
10 acquire YTC's business. The parties never discussed severing their business
11 relationship at any time.

12 22. The parties were very close to entering into an agreement on these terms.
13 Indeed, Mr. Leibman traveled to YTC's Arizona office to meet with Mr. Weatherhead
14 and YTC's other shareholders, and Mr. Weatherhead traveled to FROSCH's Houston
15 office to further discuss the deal with Mr. Leibman.

16 23. Notwithstanding the discussions between FROSCH and YTC, YTC entered
17 into an agreement with another travel management company – Tzell Travel, LLC
18 (“Tzell”) – dated August 26, 2009 (the “Tzell Agreement”). Pursuant to the Tzell
19 Agreement, Tzell was obligated to establish a joint branch ARC office of YTC, known
20 as the “Tzell/YTC Branch,” and YTC would report its airline and other travel services
21 sales through the Tzell/YTC Branch.

22 **YTC Enters Into a Valid, Binding, and Enforceable Agreement with FROSCH**

23 24. In or around November 2014, Messrs. Leibman and Weatherhead resumed
24 discussions concerning a business arrangement whereby YTC would transfer its
25 business to a FROSCH ARC branch office, and begin reporting all of its airline sales
26 through FROSCH's branch office.

27 25. Again, during the discussions, the parties made clear and expressed their
28 intent that FROSCH would ultimately acquire YTC's business when Mr. Weatherhead

1 wanted to sell it. Until that time, the parties made clear that they intended that YTC
2 would continue reporting all of its airline sales through FROSCH's branch office.

3 26. On or about November 23, 2014, FROSCH and YTC entered into a valid,
4 binding, and fully enforceable agreement. A true and correct copy of the
5 FROSCH/YTC agreement (the "FROSCH Agreement") is attached as Exhibit 1.

6 27. Each of their respective spouses executed the agreement as witnesses to
7 their signatures. Excited that the parties had finally entered into this long-anticipated
8 agreement that would result in FROSCH acquiring YTC's business, Messrs.
9 Weatherhead's and Leibman's spouses embraced after the agreement was executed.

10 28. The FROSCH Agreement was collectively negotiated and drafted by
11 Messrs. Leibman and Weatherhead. In at least one instance, Robin Sanchez – YTC's
12 COO – assisted Mr. Weatherhead by filling in the name of the YTC-related entity in the
13 FROSCH Agreement before the parties signed it.

14 29. Specifically, on October 21, 2014, Ms. Sanchez, acting on YTC's behalf,
15 forwarded a draft of the FROSCH Agreement to Mr. Leibman after filling in "YTC
16 Travel, LLC" as FROSCH's counterparty in the agreement. Upon information and
17 belief, Ms. Sanchez made an error when she mistakenly identified that entity (as defined
18 above, LLC) as FROSCH's counterparty, as upon further information and belief, that
19 entity does not exist.

20 30. The correct legal name of the existing entity that the parties intended to be
21 bound by and perform under the FROSCH Agreement is "Your Travel Center, Inc." (as
22 defined above, YTC). Indeed, the FROSCH Agreement states that "YTC Travel, LLC"
23 has "an office at 414 South Mill Ave, Tempe, AZ 85281." But there is no "YTC Travel,
24 LLC" listed on Arizona's Secretary of State website or YTC's website.

25 31. Instead, the only YTC-related entity that appears on both the Arizona
26 Secretary of State website and YTC's website is "Your Travel Center, Inc." And each
27 website lists that entity's address as 414 South Mill Avenue, Tempe, Arizona 85281 –
28

1 the same address that appears in the FROSCH Agreement for FROSCH's counterparty.²

2 32. As Messrs. Leibman and Weatherhead had discussed, the FROSCH
3 Agreement reflects the parties' intent that YTC would report all of its airline sales
4 through FROSCH's branch office until Mr. Weatherhead wanted to sell YTC, at which
5 time, FROSCH would purchase YTC's business.

6 33. Specifically, the FROSCH Agreement states that "YTC shall transfer all of
7 its business to an ARC [Airlines Reporting Corporation] ... branch office of FROSCH
8 at the YTC location; and in this regard, shall process all its client requests for air
9 transportation using ARC facilities contracted to FROSCH." Ex. 1 at 1, second
10 "whereas" clause.

11 34. To enable YTC to report its airline and other travel services sales through a
12 FROSCH branch office, FROSCH agreed to establish an ARC branch office at YTC's
13 main location and transfer the address of FROSCH's ARC to that YTC office. Once
14 FROSCH transferred the address, YTC agreed to "begin reporting all of its airline sales
15 through the FROSCH ARC." *Id.* ¶ 1.

16 35. The FROSCH Agreement further makes clear that YTC would continue
17 reporting its airline sales through FROSCH's ARC branch office until Mr. Weatherhead
18 wanted to sell YTC. Indeed, the agreement contains a carefully negotiated and
19 specifically delineated "Succession" paragraph that sets forth the process by which YTC
20 is to sell itself to FROSCH. *Id.* ¶ 9.

21 36. First, the provision provides that if Mr. Weatherhead is no longer able to
22 operate as YTC's CEO, FROSCH will (i) assume interim CEO responsibilities of YTC
23 and work closely with YTC's senior management for a \$100,000 annual fee; and (ii)
24 **"have an option of first refusal to acquire all company shares"** (except those of
25 YTC's COO, Robin Sanchez) at a set formula when Mr. Weatherhead's wife (Brenda
26

27 ² The only other YTC-related entity of which FROSCH is aware is "Your Travel Center,
28 LLC." Upon information and belief, that entity is a California limited liability company that is
not licensed to do business in Arizona and does not have an office in Arizona.

1 Weatherhead) decided to sell the business. *Id.* ¶ 9(A) (emphasis added). While the
2 agreement provides for an “option of first refusal,” Messrs. Weatherhead and Leibman
3 always intended and expected that FROSCH would ultimately acquire YTC’s business.

4 37. Second, the FROSCH Agreement provides that if YTC’s CFO (Jackie
5 Jones) was no longer able to operate as YTC’s CFO while Mr. Weatherhead was still
6 running YTC, FROSCH would acquire Ms. Jones’s shares at a set formula and assume
7 responsibility for YTC’s financial operations for a set annual fee. *Id.* ¶ 9(B). This
8 further demonstrates the parties’ intent that FROSCH would continue to acquire YTC’s
9 shares as they became available until Mr. Weatherhead ultimately decided to sell the
10 business, at which point, FROSCH would buy the remaining shares.

11 38. In connection with the agreement’s “Succession” provision, Mr. Leibman
12 specifically met and spoke with YTC’s shareholders before the FROSCH Agreement
13 was executed. In those discussions, each of YTC’s shareholders agreed and confirmed
14 that YTC would ultimately sell its business to FROSCH.

15 39. The “Succession” provision also addresses the parties’ termination of the
16 FROSCH Agreement by allowing YTC to “terminate” the agreement only upon the
17 occurrence of a specifically defined event. The agreement provides that, if Mr. Leibman
18 is no longer able to serve as FROSCH’s President and CEO, or if FROSCH changed
19 ownership, “YTC will have an option to continue with this agreement or to terminate at
20 any time thereafter merely by providing 30 days written notice.” *Id.* ¶ 9(C).

21 40. This provision further evidences the parties’ intent that YTC would
22 continue performing under the FROSCH Agreement as long as Mr. Leibman, who Mr.
23 Weatherhead admired and respected, was in charge. Mr. Weatherhead’s respect and
24 admiration for Mr. Leibman further explains why Mr. Weatherhead agreed that
25 FROSCH would ultimately purchase his business.

26 41. As the parties intended, this is the only termination provision in the
27 FROSCH Agreement, which the parties specifically negotiated. YTC was therefore
28 required to continue performing under the agreement as long as Mr. Leibman was

1 running FROSCH, or until Mr. Weatherhead decided to sell YTC – a decision that was
2 entirely within YTC’s control.

3 42. Accordingly, the FROSCH Agreement specifically covers every
4 contingency, expressly provides for FROSCH’s “succession” of YTC’s business, and
5 explicitly provides for termination only if Mr. Leibman ceased to be FROSCH’s
6 President and CEO or FROSCH changed ownership.

7 43. In consideration for YTC’s agreement, YTC was given access to
8 FROSCH’s vast and superior service providers, preferred vendors, and support services
9 and technology. *Id.* ¶¶ 4, 7.

10 44. YTC also was to be paid commissions and overrides for its airline and
11 travel services sales reported through FROSCH’s ARC branch office, which were
12 significantly higher than the commissions and overrides YTC would receive by
13 reporting sales through its own ARC branch. *Id.* ¶ 2.

14 45. FROSCH would likewise receive increased commissions and overrides in
15 two forms. First, FROSCH would now receive a portion of the commissions and
16 overrides generated from YTC’s sales reported through FROSCH’s branch office.
17 Second, FROSCH’s commissions and overrides – which are based on volume of sales
18 reported through its ARC appointments nationwide – would increase significantly as a
19 result of YTC reporting its sales through FROSCH’s ARC branch office.

20 46. FROSCH would also receive additional revenues as a result of YTC
21 reporting its hotel bookings through FROSCH’s global distribution systems and
22 FROSCH providing certain administrative support services to YTC. *Id.* ¶¶ 2(a), 7.

23 47. Mr. Weatherhead, in his personal capacity, expressly guaranteed YTC’s
24 performance under the FROSCH Agreement. He also agreed to execute a personal
25 guarantee in the form attached as an exhibit to the FROSCH Agreement. *Id.* ¶ 5.

26 48. YTC also agreed to indemnify and hold FROSCH and its employees
27 harmless from any liabilities, damages, and expenses, including attorneys’ fees and
28 costs, arising from “the negligent or wrongful act, error, or omission of YTC from their

1 failure to perform this Agreement.” *Id.* ¶ 5.

2 49. The parties also agreed that the FROSCH Agreement would be “governed
3 by and interpreted under the laws of the State of New York.” *Id.* ¶ 11(g).

4 **YTC Terminates the Tzell Agreement**

5 50. In an act that acknowledges that the FROSCH Agreement was a final,
6 valid, binding, and fully enforceable agreement under which YTC was required and
7 intended to perform, YTC provided notice to Tzell that it was terminating the Tzell
8 Agreement the day after YTC and FROSCH executed the FROSCH Agreement.
9 Specifically, YTC notified Tzell that it was terminating the Tzell Agreement within 30
10 days (i.e., by December, 24, 2014).

11 51. As an accommodation to YTC, and to allow YTC’s termination of the
12 Tzell Agreement to take effect, Messrs. Weatherhead and Leibman agreed after they
13 executed the FROSCH Agreement that YTC would start performing under the FROSCH
14 Agreement on January 5, 2015 – the first Monday after New Year’s Day.

15 52. FROSCH has performed its end of the bargain. Specifically, FROSCH
16 took steps to plan for YTC’s performance under the FROSCH Agreement. Among
17 other steps, it informed its service providers, including major airlines, that YTC would
18 begin reporting its airline and other travel services sales through FROSCH’s ARC
19 branch office, which would result in more volume reported through FROSCH’s ARC
20 appointment. Upon information and belief, in reliance upon FROSCH’s
21 representations, FROSCH’s service providers took affirmative steps to plan for and
22 accommodate the expected increased sales that would be reported through FROSCH’s
23 ARC.

24 53. Upon further information and belief, YTC’s initial termination notice to
25 Tzell was well-received, and Tzell acknowledged and accepted the termination. But
26 soon thereafter, Barry Liben, Tzell’s CEO, engaged in a campaign to pressure, bully,
27 and intimidate Mr. Weatherhead by threatening to take all of his travel agents, and
28 warned that he would destroy Mr. Weatherhead personally and professionally if he

1 joined FROSCH.

2 54. Upon further information and belief, upon hearing Mr. Liben's threats, Mr.
3 Weatherhead capitulated and attempted to unilaterally terminate the FROSCH
4 Agreement by sending an email to Mr. Leibman. In the email, Mr. Weatherhead
5 admitted signing the agreement, but cited "certain issues from both a legal and business
6 perspective which have come to light over the past 48 hours" as the reason for his
7 unilateral termination.

8 55. YTC's failure to perform and its termination of the FROSCH Agreement
9 breached the contract, which as described above, provides for termination only if Mr.
10 Leibman ceased to be FROSCH's President and CEO or if FROSCH's ownership
11 changed. Neither circumstance has occurred. Accordingly, YTC is obligated to
12 perform under the FROSCH Agreement by reporting its airlines' and other travel
13 services' sales through FROSCH's ARC branch office.

14 56. By unilaterally purporting to terminate the FROSCH Agreement and
15 failing to perform its contractual obligations under that agreement, YTC breached the
16 FROSCH Agreement.

17 **FIRST COUNT**

18 **(Breach of Contract Against YTC – Specific Performance)**

19 57. FROSCH repeats the allegations set forth above in Paragraphs 1 through 56
20 herein.

21 58. The FROSCH Agreement is a valid, binding, and fully enforceable contract
22 between FROSCH and YTC.

23 59. FROSCH has performed its obligations under the contract and is ready,
24 willing, and able to complete any remaining obligations.

25 60. YTC has not performed all of its obligations under the FROSCH
26 Agreement, and has reneged on its performance. But it is able to fully perform.

27 61. FROSCH has no adequate remedy at law for YTC's breach of the
28 agreement. As described by YTC's website, YTC's business and affiliations with travel

1 management companies are “unique,” and YTC has a long list of unique customers that
 2 it developed over more than 40 years in the industry, which is constantly growing. In
 3 addition, YTC describes itself as “a full scale 100 Million dollar Travel Agency” that is
 4 “one of the premier Host Travel Agencies” with “over 200 Independent Contractors.”

5 62. Moreover, if YTC fails to perform under the FROSCH Agreement,
 6 FROSCH will suffer significant, unquantifiable damages in the form of reputational
 7 harm and lack of credibility in the travel industry, which FROSCH has worked hard to
 8 develop for over 40 years. Specifically, based on YTC’s execution of the FROSCH
 9 Agreement, Mr. Leibman made representations to FROSCH’s longtime service
 10 providers, and those providers relied on those representations by taking steps to
 11 accommodate the increased volume that FROSCH expected to be reported through its
 12 ARC.

13 63. Because no damages could compensate FROSCH for the loss of such a
 14 unique business opportunity to acquire YTC’s business, and because FROSCH will
 15 suffer unquantifiable reputational harm, FROSCH seeks specific performance by YTC
 16 of the FROSCH Agreement.

17 **SECOND COUNT**

18 **(Breach of Contract Against YTC -- Damages)**

19 64. FROSCH repeats the allegations set forth above in Paragraphs 1 through 56
 20 herein.

21 65. As an alternative to the First Count, if the Court does not grant FROSCH
 22 specific performance and order YTC to perform under the FROSCH Agreement, YTC is
 23 liable for breaching the FROSCH Agreement.

24 66. The FROSCH Agreement is a valid, binding, and fully enforceable contract
 25 between FROSCH and YTC.

26 67. FROSCH performed its contractual obligations under the agreement.

27 68. YTC breached the FROSCH Agreement by purporting to unilaterally
 28 terminate the agreement in contravention of the termination provision and stating that it

1 would not perform its contractual obligations under the agreement.

2 69. FROSCH has been damaged as a direct and proximate result of YTC's
3 breach. First, FROSCH lost the ability to ultimately acquire YTC's business. Second,
4 FROSCH lost the additional commissions and overrides it would have received from
5 YTC reporting its sales through FROSCH's ARC branch office. Third, FROSCH lost
6 the additional revenues it would have received from YTC reporting its hotel bookings
7 through FROSCH's global distribution systems, as well as the revenues FROSCH
8 would have received from providing administrative support services to YTC. *Id.* ¶¶
9 2(a), 7. Fourth, FROSCH will suffer reputational harm in the industry based on its
10 representations to its service providers regarding the increased volume of sales it
11 expected to be reported through its ARC branch office, on which those providers relied.

12 **THIRD COUNT**

13 **(Breach of Contract Against Mr. Weatherhead)**

14 70. Plaintiffs repeat the allegations set forth above in Paragraphs 1 through 56
15 and 64 through 69 herein.

16 71. As an alternative to the First Count, if the Court does not grant FROSCH
17 specific performance and order YTC to perform under the FROSCH Agreement, Mr.
18 Weatherhead is personally liable for YTC's breach of the FROSCH Agreement.

19 72. Mr. Weatherhead personally guaranteed YTC's performance of its
20 obligations under the FROSCH Agreement, and expressly agreed to execute a separate
21 personal guarantee in a form attached as an exhibit to the FROSCH Agreement.

22 73. As set forth above, YTC breached its contractual obligations under the
23 FROSCH Agreement by, among other things, refusing to perform and purporting to
24 unilaterally terminate that agreement, and FROSCH was damaged as a direct and
25 proximate result of YTC's breach.

26 74. Mr. Weatherhead is, therefore, personally liable for YTC's breach. Mr.
27 Weatherhead is also personally liable for failing to execute the separate guarantee
28 attached as a form to the FROSCH Agreement.

FOURTH COUNT

(Reformation Against YTC)

75. FROSCH repeats the allegations set forth above in Paragraphs 1 through 74 herein.

76. If the Court does not find that YTC is the correct, existing, legal entity that was the parties' intended counterparty to FROSCH under the FROSCH Agreement, the FROSCH Agreement should be reformed to reflect that YTC is FROSCH's counterparty to the FROSCH Agreement, and is bound by, and required to perform under, that agreement.

77. First, the parties' inclusion of LLC instead of YTC as the counterparty to the FROSCH Agreement was based on a mutual mistake of fact that is material and goes to the foundation of the agreement – specifically, the identity of FROSCH's correct counterparty to the agreement.

78. In negotiating the FROSCH Agreement, Messrs. Leibman and Weatherhead intended that YTC – upon information and belief, the only existing legal entity with an office located at the exact address listed in the FROSCH Agreement (414 South Mill Ave., Tempe, Arizona 85281) – would be FROSCH's counterparty to the agreement.

79. When Ms. Sanchez included LLC as FROSCH's counterparty in the FROSCH Agreement, however, she mistakenly named the wrong entity. Upon information and belief, that entity does not exist, is not registered with Arizona's secretary of state, and does not have an office in Tempe, Arizona.

80. Similarly, Mr. Leibman was mistaken when he executed the FROSCH Agreement with the wrong counterparty included.

81. Accordingly, both parties were mistaken when they executed the FROSCH Agreement, which identified the wrong YTC-related entity named as FROSCH's counterparty.

82. To that end, unknown to Messrs. Leibman and Weatherhead, the final,

1 signed, FROSCH Agreement does not reflect the parties' intent to bind YTC, for YTC
2 to perform under the agreement, and for FROSCH to ultimately purchase YTC. Messrs.
3 Leibman and Weatherhead, on behalf of FROSCH and YTC, respectively, shared the
4 same erroneous belief as to a material fact, and their acts of signing the FROSCH
5 Agreement with the wrong YTC-related entity listed as FROSCH's counterparty do not
6 accomplish their mutual intent to bind YTC.

7 83. Alternatively, if Mr. Weatherhead was not mistaken when he executed the
8 FROSCH Agreement on behalf of LLC – upon information and belief, a non-existent
9 entity – the agreement still should be reformed because of FROSCH's unilateral mistake
10 of a material fact (i.e., the correct legal entity's name) as a result of Mr. Weatherhead's
11 and YTC's fraud in intentionally deceiving FROSCH into signing an agreement with a
12 nonexistent entity.

13 84. Acting on FROSCH's behalf, Mr. Leibman reasonably relied to his
14 detriment on YTC's and Mr. Weatherhead's representations and omissions that LLC
15 was the correct legal entity to be included as FROSCH's counterparty in the FROSCH
16 Agreement. Mr. Weatherhead made these representations and omissions when, among
17 other times, he failed to notify Mr. Leibman that the wrong YTC-related entity was
18 identified as FROSCH's counterparty during the negotiations, as well as when he
19 executed the FROSCH Agreement on behalf of the wrong (and nonexistent) entity.

20 85. Mr. Leibman intended that FROSCH's counterparty in the FROSCH
21 Agreement would be YTC, the legal entity that operates YTC's travel management
22 business that FROSCH contracted to ultimately acquire. Specifically, the FROSCH
23 Agreement (i) provides that "YTC" operates independent retail travel agencies; (ii)
24 identifies "YTC" as having more than one office, including one located at 414 South
25 Mill Avenue, Tempe, Arizona 85281; (iii) identifies Mr. and Mrs. Weatherhead and Ms.
26 Jones (YTC's CFO) as "YTC" shareholders; and (iv) provides that "YTC" would report
27 all of its airline sales through a FROSCH ARC branch office. Upon information and
28 belief, Your Travel Center, Inc. (YTC, as defined above) is the only YTC-related entity

1 that (i) operates independent retail travel agencies; (ii) has more than one office,
 2 including one located at 414 South Mill Avenue, Tempe, Arizona 85281; (iii) includes
 3 Mr. and Mrs. Weatherhead and Ms. Jones (YTC's CFO) as shareholders; and (iv) has
 4 any airline sales to report through a FROSCH ARC branch office.

5 86. Because Mr. Leibman did not know the correct name of the proper legal
 6 entity, he reasonably relied on Mr. Weatherhead's representations and omissions to his
 7 detriment.

8 87. Mr. Weatherhead, acting on YTC's behalf, fraudulently induced FROSCH
 9 to enter into the FROSCH Agreement that listed the incorrect YTC-related entity as its
 10 counterparty. Upon information and belief, Mr. Weatherhead knew – or should have
 11 known – that the agreement identified the wrong YTC-related entity, and intentionally
 12 misrepresented or omitted the correct legal entity name to deceive FROSCH to induce it
 13 to enter into an agreement with a nonexistent entity. Indeed, as YTC's President and
 14 owner since 1995, Mr. Weatherhead knew – or should have known – that the incorrect
 15 YTC-related entity's name was included in the agreement.

16 88. The final FROSCH Agreement, therefore, does not properly express
 17 FROSCH's intent to bind and obligate YTC – the correct legal entity – to perform under
 18 the agreement.

19 89. FROSCH has been damaged as a direct and proximate result of Mr.
 20 Weatherhead's and YTC's material misrepresentations and omissions that were
 21 intentionally made to deceive FROSCH, as the true and correct YTC-related entity with
 22 the assets, clients, and travel services business that the parties intended would perform
 23 and ultimately be acquired by FROSCH is not identified as FROSCH's counterparty in
 24 the FROSCH Agreement.

25 **FIFTH COUNT**

26 **(Breach of Contract Against LLC)**

27 90. FROSCH repeats the allegations set forth above in Paragraphs 1 through 56
 28 herein.

91. As an alternative to the First through Fourth Counts, if the Court finds that LLC is a valid and existing legal entity and the correct legal entity that the parties intended to be FROSCH's counterparty under the FROSCH Agreement, LLC is liable for breaching the FROSCH Agreement.

92. The FROSCH Agreement is a valid, binding, and fully enforceable contract between FROSCH and LLC.

93. FROSCH performed its contractual obligations under the agreement.

94. LLC breached the FROSCHE agreement by purporting to unilaterally terminate the agreement in contravention of the termination provision and stating that it would not perform its contractual obligations under the agreement.

95. FROSCH has been damaged as a direct and proximate result of LLC's breach. First, FROSCH lost the ability to ultimately acquire LLC's business. Second, FROSCH lost the significant, additional commissions and overrides it would have received from LLC reporting its sales through FROSCH's ARC. Third, FROSCH lost the additional revenues it would have received from YTC reporting its hotel bookings through FROSCH's global distribution systems, as well as the revenues FROSCH would have received from providing administrative support services to YTC. *Id.* ¶¶ 2(a), 7. Fourth, FROSCH will suffer reputational harm in the industry based on its representations to its service providers regarding the increased volume on which those providers relied.

SIXTH COUNT

(Breach of Contract Against Mr. Weatherhead)

96. FROSCH repeats the allegations set forth above in Paragraphs 1 through 56 and 90 through 95 herein.

97. As an alternative to the First through Fourth Counts, if the Court finds that LLC is a valid and existing legal entity that is the correct legal entity that the parties intended to be FROSCH's counterparty under that agreement, Mr. Weatherhead is personally liable for breaching the FROSCH Agreement.

98. Mr. Weatherhead personally guaranteed LLC's performance of its obligations under the FROSCHE Agreement, and expressly agreed to execute a separate personal guarantee in a form attached as an exhibit to the FROSCHE Agreement.

99. As set forth above, LLC breached its contractual obligations under the FROSCHE Agreement by, among other things, refusing to perform and purporting to unilaterally terminate that agreement, and FROSCHE was damaged as a direct and proximate result of LLC's breach.

100. Mr. Weatherhead is, therefore, personally liable for LLC's breach. Mr. Weatherhead is also personally liable for failing to execute the separate guarantee attached as a form to the FROSCH Agreement.

SEVENTH COUNT

(Breach of Contract Against Mr. Weatherhead)

101. FROSCH repeats the allegations set forth above in Paragraphs 1 through 56 herein.

102. As an alternative to the First through Sixth Counts, if the Court finds that neither YTC nor LLC is bound by the FROSCH Agreement, Mr. Weatherhead is personally liable for breaching that agreement.

103. Upon information and belief, LLC is a nonexistent entity, and Mr. Weatherhead knew that it was a nonexistent entity when he executed the FROSCH Agreement on its behalf.

104. Accordingly, the FROSCH Agreement remains a valid, binding, and fully enforceable agreement between FROSCH and Mr. Weatherhead.

105. Mr. Weatherhead breached his contractual obligations under the FROSCH Agreement by, among other things, refusing to perform and purporting to unilaterally terminate that agreement, and FROSCH was damaged as a direct and proximate result of Mr. Weatherhead's breach.

106. Mr. Weatherhead is, therefore, personally liable for breaching the FROSCH Agreement.

1 WHEREFORE, FROSCH seeks the following relief:

- 2 A. On the First Count (specific performance), an Order from the Court
3 requiring YTC to perform its contractual obligations under the FROSCH
4 Agreement;
- 5 B. As an alternative to the First Count, on the Second Count, damages in an
6 amount to be determined at trial against YTC, together with interest and all
7 fees (including attorneys' fees), costs, and expenses in bringing and
8 prosecuting this action;
- 9 C. As an alternative to the First Count, on the Third Count, damages in an
10 amount to be determined at trial against Mr. Weatherhead in his personal
11 capacity, together with interest and all fees (including attorneys' fees),
12 costs, and expenses in bringing and prosecuting this action;
- 13 D. On the Fourth Count, an Order from the Court reforming the FROSCH
14 Agreement to reflect that YTC is FROSCH's counterparty to the
15 agreement, and as set forth above in the First Count, specific performance
16 ordering YTC to perform its contractual obligations under the FROSCH
17 Agreement. Alternatively, as set forth above in the Second and Third
18 Counts, damages in an amount to be determined at trial against YTC and
19 Mr. Weatherhead in his personal capacity, together with interest and all
20 fees (including attorneys' fees), costs, and expenses in bringing and
21 prosecuting this action;
- 22 E. As an alternative to the First through Fourth Counts, on the Fifth Count,
23 damages in an amount to be determined at trial against LLC, together with
24 interest and all fees (including attorneys' fees), costs, and expenses in
25 bringing and prosecuting this action;
- 26 F. As an alternative to the First through Fourth Counts, on the Sixth Count,
27 damages in an amount to be determined at trial against Mr. Weatherhead in
28 his individual capacity, together with interest and all fees (including

attorneys' fees), costs, and expenses in bringing and prosecuting this action;

G. As an alternative to the First through Sixth Counts, on the Seventh Count, damages in an amount to be determined at trial against Mr. Weatherhead in his personal capacity, together with interest and all fees (including attorneys' fees), costs, and expenses in bringing and prosecuting this action;

H. Such other and further relief as this Court deems just and proper.

DATED: February 13, 2015 MEYLAN DAVITT JAIN AREVIAN & KIM LLP

By: /s/ Vincent J. Davitt

Vincent J. Davitt

Shaunt T. Arevian

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FT TRAVEL – NEW YORK, LLC

d/b/a FROSCH TRAVEL

Of Counsel

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REQUEST FOR JURY TRIAL

Plaintiff hereby demands a jury trial.

1
2 DATED: February 13, 2015

MEYLAN DAVITT JAIN AREVIAN & KIM LLP

3 By: /s/ Vincent J. Davitt

4 Vincent J. Davitt

5 Shaunt T. Arevian

6 Attorneys for Plaintiff

7 FT TRAVEL – NEW YORK, LLC

8 d/b/a FROSCH TRAVEL

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